

What is incorporation by reference?

Generally, “incorporation by reference” refers to “[a] method of making a secondary document part of a primary document by including in the primary document a statement that the secondary document should be treated as if it were contained within the primary one.” Incorporation by Reference, *Black’s Law Dictionary* (10th ed. 2014).

Can an administrative rule incorporate by reference?

Under Subsection [63G-3-201](#)(7), an agency may enact a rule that incorporates by reference any of the following:

- all or any part of another code, rule, or regulation that has been adopted by:
 - a federal agency;
 - an agency or political subdivision of this state;
 - an agency of another state; or
 - a nationally recognized organization or association;
- state agency implementation plans mandated by the federal government for participation in the federal program;
- lists, tables, illustrations, or similar materials that:
 - are subject to frequent change, fully described in the rule, and are available for public inspection; or
 - the executive director of the Department of Administrative Services, or the executive director's designee, determines are too expensive to reproduce in the administrative code.

What requirements must be met when an administrative rule incorporates by reference?

Under Subsection [63G-3-201](#)(7), a rule that incorporates by reference must:

- be enacted according to the procedures outlined in the Utah Administrative Rulemaking Act;
- state that the referenced material is incorporated by reference;
- state the date, issue, or version of the material being incorporated; and
- define specifically what material is incorporated by reference and identify any agency deviations from it.

In addition, under Subsection [63G-3-201](#)(7), an agency that enacts a rule that incorporates by reference must:

- identify any substantive changes in the material incorporated by reference by following the rulemaking procedures of the Utah Administrative Rulemaking Act; and
- maintain a complete and current copy of the referenced material available for public review at the agency and at the Office of Administrative Rules.